

THE LETTERS
of the
REPUBLIC

. . .
*Publication and the Public Sphere
in Eighteenth-Century America*

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of Franklin's super-irony here may be attributed to the very rigor of his modernity, to his at times untempered pursuit of print negativity.

For the same reason, if the character of the man of three letters appears here in the form of a joke, we must remember that the stakes are high. Some four years after the Wedderburn affair, Joseph-Siffred Duplessis would paint his famous portrait of Franklin, the frame of which would bear the bold, simple legend "VIR." It might seem that only a poor pun unites the three-letter man of Duplessis' portrait to the man of three letters named by Wedderburn, but the logic that would justify such a pun has been provided by Franklin himself. In Franklin's career the virtuous citizen of the republic (*vir*) attests to his virtue by constituting himself in the generality of letters; if the designation of manipulator (*fur*) is made appropriate, so is the exemplary and general status that makes possible the designation of "VIR" rather than "Franklin." The poet who claimed that the calm philosopher's withdrawal bestowed liberty upon his country had disclosed the central truth of Franklin as man of letters: his career is designed at every level to exploit the homology between print discourse and representative polity. He cashes in like no one else on the resource of negativity. The logic of his career is the logic of representation.

Its closest analogue may be the fictive speaking voice of the written constitution, that bizarre invention in which Franklin took a hand. "We, the People," like B. Franklin, Printer, Richard Saunders, Silence Dogood, and the Homo Trium Literarum, speaks only in print, and for precisely that reason speaks with the full authority of representative legitimacy. It is with the Constitution, therefore, at the climax of Franklin's career, that his lifelong effort to locate himself in the generality of republican letters finds its embodiment. In his well-known speech to the convention, Franklin submerges his own voice to the motion for unanimous passage, authorizing as his own the voice of the document, as publication comes literally to constitute the public in yet another pseudonymous text.

· IV ·

*Textuality and Legitimacy
in the Printed Constitution*

IN OUR SOCIETY, outfitted as it is with unprecedented technologies of discipline, the forms of coercion are innumerable. The supreme means of deriving force over the will of others, however, is to win the appeal to a written text. Let us consider this state of affairs. Why is the ground of legality, and thus of coercion, an official hermeneutics of a written text? What establishes *its* legality, and what is the significance of its textuality? The question is complicated because the Constitution's textuality was an issue even before conflict over the text's meaning was institutionalized in the role of the court system. The act of writing constitutions had been an American innovation, and in the case of the federal Constitution of 1787 at least, one that took place only on the assumption that the constitutional text would be a printed one. The subject of this chapter, therefore, is the meaning of the writtleness and printedness of constitutions in the culture of republican America, and of the relation between textuality, so considered, and the changing criteria of legitimacy that produced our official hermeneutics.

For Americans of the Revolutionary period the written constitution was a way of literalizing the doctrine of popular sovereignty. That literalization was a complex strategy, giving substance to the people's authority but doing so only through the agency of writing. It was a deeply problematic strategy, since the sovereignty of the people obviously is not identical to the official hermeneutics entailed by the constitutive text. On the other hand, if popular sovereignty seems to be a doctrine beyond question in our society, I shall argue that its literalization articulated its already problematic nature. The writtleness of the Constitution mediated a central and paradoxical problem in revolutionary politics: that of sovereignty in a legal order, or, more generally, the legality of law.

The British too had believed their polity to be founded, in theory, on the sovereignty of the people. Sovereignty lay in Parliament, or the king-in-Parliament, but it did so because all Englishmen in their capacity as subjects were represented there and could be said to have consented to Parliament's laws. The imperial crisis leading to the Revolution came about when Americans, refusing their consent to the laws of Parliament, denied that they were represented there. In doing so they disclosed a tautology deployed in England to legitimate the order of law: although what gave authority and legality to parliamentary law was its claim to represent the people, the only warrant for its claim to represent the people was parliamentary law. No one questioned the appeal to sovereignty; it was axiomatic that law required some authority for its legality. But since Americans were denying that they themselves, in representation, were the authority for law's legality, it became obvious that parliamentary law was its own authority. The American rhetoric of contestation, which identified parliamentary law as arbitrary power, thus derived its categories and its power from the British rhetoric of legitimation.¹

Working out that rhetoric of contestation could be dangerous. Since it was (and could only have been) worked out within the paradigm of representational legitimation, having identified the tautology of representational politics left the Americans with a heavily invested challenge to the legitimacy of their own governments. Recognizing that their challenge to the British was not just a challenge to particular rulers but to the fundamental validity of a legal order, the Continental Congress, on May 15, 1776, issued a decree calling for suppression of the authority of the Crown and for the establishment of new state governments, "on the authority of the people." A peculiar crisis ensued. Extant governments, like Parliament, already claimed the authority of the people in their representational character, though their claim to that authority became problematic because revolutionary politics depended on rejecting the circularity of such claims. But it also seemed that any *legal* procedures for claiming the authority of the people would have to be void along with the rest of the Crown-derived legal order. Far from being a lawyer's debate internal to law, this was a political crisis involving the legality of law. In a time of increasing military violence and crowd actions, the legal order as a whole was losing legitimacy.

In Philadelphia, as soon as word had spread of the May 15 decree, a pamphlet called *The Alarm* appeared, asking the hard question of who the "proper persons" could be to establish a government, "on the authority of the people," and what could be the proper "mode of authorizing such

persons?" The Assembly was claiming that right, but as *The Alarm* pointed out, the Assembly derived its legal warrant from the proprietary charter, the authority of which was now void. Were the Assembly to suppress the authority of the Crown and institute the authority of the people, it would be suppressing its own authority and instituting its own authority; thus the Assemblymen might be "continually making and unmaking themselves at pleasure" (1). The Assembly, in other words, was not legal enough precisely because it was already legal.

For all the splendor of the argument, one has to wonder what ideal standard is being invoked against the Assembly. The very posing of the problem in *The Alarm* offers us the spectacle of a legal order trying to legalize itself. "It is now high time," the pamphlet says, "to come to some settled point, that we may call ourselves a people; for in the present unsettled state of things we are only a decent multitude . . . We are now arrived at a period from which we are to look forward as a *legal people*" (3). From decent multitude to legal people—how could this transformation come about? Better yet, how could it come about without law being there already?

The crisis symptomatized an irresolvable problem in the sovereignty of the people. The sovereignty of the people had to be appealed to as the ground for a legal order, but it could only be represented from within that legal order. As James Otis had put it in 1764, "An original supreme Sovereign, absolute and uncontrollable, *earthly* power *must* exist in and preside over every society; from whose final decisions there can be no appeal but directly to Heaven. It is therefore *originally* and *ultimately* in the people."² Originally, ultimately—but in the meantime? One reason why the American Revolution has struck many observers as not being very revolutionary is that the Americans insisted at every point on the continuity of law; new governments could not be established by fiat.³ The common-law tradition continued; as a sphere of customary law rather than of positive, bureaucratic law, it required no original authority and could even be said to be authoritative *because* its origins lay beyond memory.⁴ What required original authority was a state apparatus and the legal order in which it would operate. In this sphere of positive, bureaucratic law, revolutionary rhetoric insisted that law had been abrogated. Some in New Hampshire, for example, believed that once royal prerogative was annulled, "they never were a body politic in any legal sense whatever."⁵

There is a delirious theatricality about such claims. The American crisis of law was acting out, through time, the eighteenth century's narrative of legitimation: the social contract. Once law had been relegalized by the

Massachusetts constitution, for example, an orator named Thomas Dawes proclaimed that the people had successfully “convened in a state of Nature.” “We often read,” he said, “of the original Contract, and of mankind, in the early ages, passing from a state of Nature to immediate Civilization. But *what eye* could penetrate through the gothic night and barbarous fable to that remote period? . . . And yet the people of Massachusetts have reduced to practice the wonderful theory.” By enacting the founding of the legal-political orders that would represent them, the people would render the origin within history, and the transcendent source of law as its present practice.⁶

The crisis is revealing because the difficulties encountered in generating law from nature are symptomatic of difficulties in the legal order’s claim to transcendent justification—that is, to law’s character of duty as opposed to force. Many of the period’s most vexing problems, such as the problematic character of popular sovereignty, continue to haunt law’s account of itself. As H. L. A. Hart argues in *The Concept of Law*, the people cannot be said to lay down the rules, and thus to be sovereign, because “The rules are *constitutive* of the sovereign . . . So we cannot say that . . . the rules specifying the procedure of the electorate represent the conditions under which the society, as so many individuals, obeys itself as an electorate; for ‘itself as an electorate’ is not a reference to a person identifiable apart from the rules.”⁷ Hart concludes that a legal system cannot have a sovereign, an origin of law not itself legally constrained. It can have only rules.

Hart argues against sovereignty because he identifies it with coercion, with an account of law as orders backed by threats. Sovereignty, to him, is that point at which legality must derive from orders backed by threats, or, what comes to the same thing, from politics. His solution, however, will be subject to the same problem. Hart argues that primary rules, such as statutory law, are made law by means of secondary rules—rules of recognition that enable certain people under special conditions to establish law. According to these terms, Americans of the Revolutionary period were trying, in their debates about constitution-forming, to establish the secondary rules. But what rule of recognition allows one to establish or adjudicate or even reproduce a rule of recognition? Rules, as Hart himself remarks in another context, cannot provide for their own interpretation (123). It follows that the legality of law is not itself guaranteed by law or rules. The effectiveness of any claim to be operating according to rules depends in the last analysis not on autonomous or self-modifying rules, but on the politics of rhetoric in which rules are reproduced and altered. Hart struggles to imagine a self-contained and self-authorizing system of

legality because, for him, if law’s authority derives from the contingencies and irregularities of political culture, it can no longer be exempt from the character of coercion.

Eighteenth-century Americans had the same dream of a self-contained system of positive law. Where Hart dreams of law regulated by its own regularity, Americans pictured law justified by its derivation from the will of the people. The legal-political order would be transcendent in its authority but immanent in its source. The trick was to see how law could be given to the people transcendentally and received from it immanently at the same time. Like Hart’s, *The Alarm*’s solution for the legal origination of law was predictably disappointing. The committees of inspection, “agreeable to the power they are already invested with,” were to call a convention for the drafting of a constitution. The pamphlet regards the authority of the committees as unproblematic, a tendency which should not be astonishing since at some point the authority of law must always be seen as “already invested.” Similar crises in other colonies were resolved in similar ways. The 1778 Massachusetts constitution, for example, was voted down primarily because it originated in the old House of Representatives and not a special convention; two years later a convention-drafted constitution was adopted. Only a national pest like Noah Webster would follow the critique to its conclusion, pointing out that a convention must inevitably be “chosen by the people in the manner they choose a legislature.”⁸

If the argument for constitutional conventions lacked a legal and theoretical consistency—and no argument for the legal establishment of law *could* have had such a consistency—the question of how they were legitimated could only be answered politically. Why, having mounted a brilliant challenge against the Assembly’s claim to originate law, did *The Alarm* simply turn around and accord that right to conventions established by virtually the same legal procedures? The explanation lies in one of the most brilliant insights in Gordon Wood’s history of the period. Given the colonial tradition of extralegal conventions, says Wood, the new constitutional conventions could fill their legitimating role precisely because of their inferior legality. Formed in imitation of assemblies, the conventions had long been denounced as subversions of law. They could therefore be described, as Tom Paine describes them in *Common Sense*, as “some intermediary body between the governed and the governors, that is, between the Congress and the people.”⁹ In the political culture of revolutionary America the convention was sufficiently dubious to appear unconstrained by law; thus it could stand in the place of the sovereign.

But this is also where writing comes in. Paine’s notion that the constitu-

tional conventions would stand between “the governed and the governors” is an invocation of the contract theory of written law, in which bills of rights or charters or the Magna Carta were supposed to embody agreements mutually constraining rulers and ruled. Yet, as Wood points out, “bills of rights in English history had traditionally been designed to delineate the people’s rights against the Crown or the ruler, not against Parliament which presumably represented the people” (272). The bizarre new American project of writing charters as fundamental law for all government aimed at removing the circular legitimation of representative assemblies. But the constitutions, themselves generated “on the authority of the people,” prescribed the procedures for claiming the authority of the people. By constituting the government, the people’s text literally constitutes the people. In the concrete form of these texts, the people decides the conditions of its own embodiment. The text itself becomes not only the supreme law, but the only original embodiment of the people. In this act of literalization, the meaning of the charters’ writtenness has been transformed; no longer merely a better way of keeping records, writing gives original existence to its author. *Ecriture* would save the republic.

Because the notion of writing constitutions stems from the legitimating—and, by the same token, delegitimizing—tenet of popular sovereignty, it shares a history with crowd actions, extralegal conventions, and the intense localism of community assemblies in the 1770s and 1780s. Yet these latter movements, though motivated by the desire to maintain political sovereignty in the people rather than in the kind of supreme institution that Parliament had become, were distinctly outside the legal order. They were perceived not as manifestations of the sovereign body, but as the breakdown of government altogether. In these contexts “the people” functioned as a legitimating signifier that did not entail the regularity of law. It interpellated subjects into a political world without interpellating them into the juridical order.¹⁰ In some regions, such as Vermont and the western counties of Massachusetts, people began regularly to disobey the courts, and they defended their action through rigorous republican constitutional theory. Undesirable as this delegitimizing result was for American revolutionaries, it was the practical fulfillment of the necessary conditions under which the signifier of “the people” could *legitimate* a juridical order.

Like any signifier the people could never be realizable as such. Yet in the revolutionary years a wide range of collectivities—especially local assemblies—were able to recognize themselves, in action, as the people. Moreover, they were often able to sustain that self-identification legiti-

mately in their dealings with other, similarly identified collectivities. This should not surprise us, since a people recognizing itself as the people is like a king recognizing himself as the king; we do not have to indulge in a sentimental populism to see these groups as realizations of the people. The difficulty of doing so is that our society’s representational polity rests on a recognition of the abstract and definitionally nonempirical character of the people. It is the invention of the written constitution, itself now the original and literal embodiment of the people, that ensures that the people will henceforward be nonempirical by definition. The opacity of signification has become a political fact.

By means of their customarily extralegal status, the constitutional conventions repeated the revolutionary realizations of the people so that writing could be summoned, from a position not yet law, to become already law. It could do so partly on the very grounds of a traditional logocentric anxiety: whereas in speech, persons, hearing themselves speak, are present to themselves and responsible for their language, writing migrates from persons arbitrarily. Rousseau cites this determination of language in order to argue for the necessity of speech for any realization of the people in a republic. “I maintain,” he writes in the *Essay on the Origin of Languages*, “that any language in which it is not possible to make oneself understood by the people assembled is a servile language; it is impossible for a people to remain free and speak that language.” The classical republics survived because “Among the ancients it was easy to be heard by the people in a public square.” Writing, by contrast, is the mark of modern corruption: “Popular languages have become as thoroughly useless as has eloquence. Societies have assumed their final forms: nothing can be changed in them anymore except by arms and cash, and since there is nothing left to say to the people but *give money*, it is said with posters on street corners or with soldiers in private homes; for this there is no need to assemble anyone; on the contrary, subjects must be kept scattered; that is the first maxim of modern politics.”¹¹ As Derrida observes of Rousseau, “Praise of the ‘assembled people’ at the festival or at the political forum is always a critique of representation. The legitimizing instance, in the city as in language—speech or writing—and in the arts, is the representer present in person: source of legitimacy and sacred origin.”¹²

The Americans who prevailed in the constitutional movement regarded their task not as getting rid of representation, but of deriving representation in the first place. The presence of the people to themselves in oral assembly was for them not legitimate enough precisely because it was recognized as the *source* of legitimacy. As source, or sovereign, it was by

definition not legally constrained. The speech heard by the assembled people, in the words of the Boston *Independent Chronicle*, could only come from men “with the *vox populi vox Dei* in their mouths.”¹³ In this view the *vox populi*, in order to be the *vox Dei*, cannot be in anybody’s mouth, because the owner of that mouth, as the embodiment of the sovereign, would not be a constrained subject. The people in assembly do not follow legitimate procedure in laying down the law, and they could not do so unless someone could lay down the law of legitimate procedure to the sovereign—but then *that* agency would be sovereign, and thus not following legitimate procedure. What was needed for legitimacy, the Americans came to believe, was the derivative afterward of writing rather than the speech of the people. By articulating a nonempirical agency to replace empirical realizations of the people, writing became the hinge between a delegitimizing revolutionary politics and a nonrevolutionary, already legal signification of the people; it masked the contradiction between the two.

Written constitutions, including the federal Constitution of 1787, completed a deployment of writing that had begun with the Declaration of Independence. The best account of that earlier deployment comes to us from the unlikely source of Jacques Derrida, in a set of prefatory and not entirely serious remarks at the University of Virginia during the Declaration’s bicentennial. Derrida notes the paradox that documents such as the Declaration—or the Constitution—should be signed. “In principle,” he observes, “an institution is obliged, in its history and in its tradition, in its permanence and thus in its very institutionality, to render itself independent from the empirical individuals who have taken part in its production.” Nevertheless, “the founding act of an institution—the act as archive equally with the act as performance—must retain the signature within it.” Derrida will attribute the felt need for the founding signature to “the structure of the institutive language.” But for such a purpose, “whose signature could be legitimate?”¹⁴

Derrida observes that although Jefferson wrote the Declaration, he did so not in his own right but by delegation from the other delegates, who then revised his draft and put their names to it. But they in turn put their names to it not in their own right, but “in the name and by authority of the good people of these . . . free and independent states.”

By rights, then, the signatory is the people, the “good” people . . . It is the “good people” that declares itself free and independent by the relays of its representatives of representatives. One cannot decide—and it is all the interest, the strength, and the impact of such a declara-

tive act—whether the independence is stated or produced by this statement . . . Is it the case that the good people is already freed in fact and does nothing but acts out its emancipation by the Declaration? Or rather does it liberate itself at the instant and by the signature of this Declaration? . . .

Such then is the “good people” which is “not engaged and only engaged in signing, in causing to sign its own declaration. The “we” of the Declaration speaks “in the name of the people.”

But this people does not exist. It does not exist *before* this declaration, not *as such*. If it is given birth, as a free and independent subject, as a possible signatory, that can only depend on the act of this signature. The signature invents the signatory. The latter can only authorize to sign once it has arrived at the goal, so to speak, of its signature, in a sort of fabulous retroactivity. Its first signature authorizes to sign . . .

In signing, the people speaks—and does what it says to do, but in deferring it by the intermediation of its representations, whose representativeness is only fully legitimated by the signature, and thus after the fact . . . By this fabulous event, by this fable which is implicated in the trace and is in truth possible only by the inadequacy of a present to itself, a signature is given a name. (20–23)

In this mention of the trace and the inadequacy of the present, Derrida’s philosophical concerns become visible, and he will pursue his teasing remarks only in that direction, through a discussion of Nietzsche. Yet the paradox he identifies in the Declaration is perhaps not just a tease or a philosopher’s puzzle, and Derrida indicates in passing a couple of ways in which it raises a serious issue. The puzzle of the relation between the authorizing people and the authorized signature that creates the people’s authority, he remarks, “is not a matter here of an obscurity or a difficulty of interpretation, a problematic on the way toward a solution. It is not a matter of a difficult analysis that founders before the structure of implied acts and the overdetermined temporality of events. This obscurity, this indecidability between, let us say, a performative structure and a constative structure, is *required* in order to produce the effect sought for. It is essential to the very position of law [droit] as such, that one speaks here of hypocrisy, of equivocation, of indecidability or of fiction” (21).

Derrida suggests, in other words, that the paradox of the authorized and authorizing signature replicates the contradiction that we have observed in the notion of sovereignty. By saying that it is “essential to the

very position of law as such," however, he means that the effect is not simply that of the founding moment produced by the Americans' theatrical claim that they had reverted to the state of nature. The word "droit," essential for his assertion here, denotes at once law and right, commandment and authorization to command. In the systems of positive law that characterize modern society—systems of law, let us say, not underwritten by God—law is defined by its derivation of authority from itself.

The contrast with divine authority may clarify the position of the written constitution as fundamental American law. In *Rights of Man*, Paine refers to the written constitution as a "political bible." It is no accidental turn of phrase. When the Declaration asserts that the states "are and ought to be" free and independent, Derrida notes that the "and," which "articulates and conjoins here the two discursive modalities of is and ought, statement and prescription, fact and law," occupies the position of God (27). "Are and ought to be" is like the divinely imperative and creative "Be," which human authority can approximate in an indicative "is" or a subjunctive "ought." For a legal system to derive its legality immanently rather than transcendently, therefore, requires the effect of textuality that collapses the two modes. William Nelson's study of the law in Massachusetts affords an interesting illustration of this point. According to him, prerevolutionary legislation was almost always justified by preambles that explained the continuity of the statute with common law. Beginning with the ratification of a written constitution, however, the legislature began to shift its self-understanding, so that by the 1790s "legislation was coming to rest solely on a 'be it enacted' clause—a naked assertion of sovereign legislative power."¹⁵ The Constitution deploys that effect most notably in the preamble: "We the People . . . do constitute." Legality rides on the inability to decide whether the people constitute the government already—that is, in fact—or in the future, as it were by prescription.

In order to be the law to the law, however, the people must occupy this textual position themselves, and not through the relays of representatives who sign for them in the Declaration. For this reason it was of utmost importance that the legal-political order be constituted not just by a written text, but by a printed one. In the important 1776 pamphlet called *Four Letters on Interesting Subjects*, which along with *Common Sense* was among the first to argue for a written constitution, we read that "All constitutions should be contained in some written Charter, but *that* Charter should be the act of *all* and not of *one man*." The specific negative reference here is to Pennsylvania's proprietary charter, granted by the Crown. Such charters are inappropriate models, the pamphlet suggests,

because they emanate from the authority of persons, and are thus "a species of tyranny, because they substitute the will of ONE as the law for ALL."¹⁶ Because it is not clear how any concrete act could be the act of all, the obscurity of agency in print was helpful as the enabling pretext for a constitution.

In *Common Sense*, Paine suggests that the people might charter their own government. This suggestion occasions the famous passage in which he imagines a solemn day for "proclaiming the charter," on which the charter will be brought forth and crowned so that the world will know that "in America the law is king." "But lest any ill use should afterwards arise," he adds in a revealing afterthought, "let the crown at the conclusion of the ceremony be demolished, and scattered among the people whose right it is." The political motives for this vivid image of the smashed and scattered crown would also determine the meaning of the printed artifact of the constitution. By the time of *Rights of Man*, Paine would be laying great emphasis on the constitution's printed condition, detailing carefully the procedures of printing proposed constitutions for the people's approval. Similarly, he notes with satisfaction that once approved in Pennsylvania, the state constitution had been properly scattered. "Scarcely a family was without it. Every member of the Government had a copy; and nothing was more common when any debate arose on the principle of a bill, or on the extent of any species of authority, than for the members to take the printed Constitution out of their pocket, and read the chapter with which such matter in debate was connected."¹⁷ When every representative is able to pull the people out of his pocket to receive his charter, then is law law.

The procedure of printing the Constitution for reference was undergone twice during the proceedings of the federal convention (after the reports of the committees of detail and style), that each delegate might be sure of identical wording. The procedure guaranteed that the constitution would be a general creation. Franklin's motion for unanimity indicates the importance of nonparticular authorship. When his famous speech failed to obtain the assent of every delegate, Franklin proposed that the document be signed by "unanimous consent" of the states. By this stratagem, signing the constitution would not amount to endorsing it personally. Thus, whereas the climactic moment for the Declaration of Independence was the signing, for the Constitution the climactic moment was the maneuver that deprived signing of personal meaning. For the same reason, whereas the signed copy of the Declaration continues to be a national fetish, from which printed copies can only be derived imitations, the Con-

stitution found its ideal form in every printed copy, beginning, though not specially, with its initial publication, in the place of the weekly news copy of the *Pennsylvania Packet*.

The Constitution's printedness allows it to emanate from no one in particular, and thus from the people. It is worth stressing, however, that this meaning for print is a determinate construction of political culture, not a transcendently secured logic. The Constitution derives from particular persons as much as speech or script do. We know their names—compilers, printers, and print-shop journeymen included. Only contingent structures of meaning ensure that such filiations will lack the status of the filiations of other kinds of language. Among these structures we may count the emergent paradigm of representational legitimacy, with its newly literal and literalizable notion of the sovereignty of the people. We may also include the republican metadiscourse of the specialized subsystem of public discourse, a paradigm that for several decades had informed perceptions of print in America.

Developed in practices of literacy that included the production and consumption of newspapers, broadsides, pamphlets, legal documents, and books, the republican ideology of print elevated the values of generality over those of the personal. In this cognitive vocabulary the social diffusion of printed artifacts took on the investment of the disinterested virtue of the public orientation, as opposed to the corrupting interests and passions of particular and local persons.¹⁸ *The Alarm* is a good example of the continuity between the republican metadiscourse of print and the legitimacy of constitutional measures. It argues that one reason why the Assembly should be disqualified from writing a constitution is that its members have a "private interest" in the positions to be established under such a constitution. Offering itself as a contrast, the anonymous *Alarm* proclaims: "The persons who recommend this, are Fellow-Citizens with yourselves. They have no private views; no interest to establish for themselves. Their aim, end and wish is the happiness of the Community. He who dares say otherwise, let him step forth, and prove it; for, conscious of the purity of our intentions, we challenge the world" (3).

"We," however, do so anonymously, in print, while the doubtless corrupt challenger is imagined to speak and stand forth in person. Anonymity, in the republican culture of print, designates not cowardice, but public virtue. The arguments of *The Alarm* are vouched for by the claim to disinterested concern for the general good, which claim is in turn vouched for by the perceived conditions of the very medium in which it is made. And if such assumptions on the part of the unnamed "we" of *The Alarm*

seem to be determinate features of a political culture, the same assumptions enable the unnamed "we" of the Constitution. They will also be seen animating the ratification debates, especially in the aggressive print campaign of the "Publius" who stands forth in the Federalist papers.

For all the power of the republican paradigm of print discourse, it hardly replaced the more familiar logocentric determinations of language. Readers of *The Alarm*, even while according validity to its rhetorical self-presentation, might have speculated about the authors' identities and private views. The same is true, as we know, of the Constitution. Its composers, unlike those of *The Alarm*, did not refuse to subscribe their names, though after Franklin's motion they deliberately ambiguated the significance of their subscriptions. It was not unusual during the ratification period for copies of the Constitution to omit the delegates' names, printing only the approved resolutions of unanimity. That the generality of the printed language be seen as more important than the signatures was crucial to the legitimation of the document.

Some of the document's detractors, from that time to the present, have insisted on reading its significance as determined by the private interests of those men. By the same token, many of the document's professed admirers also adduce, for their interpretations, views about the private interests of the subscribing individuals, though interests in this case are redescribed as intentions. Former Attorney General Edwin Meese, for one, considers the preamble's version of the Constitution's authority uncreditable. In his view, all official hermeneutics of the text should be governed by the intentions of the particular men who signed it on September 17, 1787, in Philadelphia—long before its ratification. Given the eighteenth-century republican understanding of the Constitution as fundamental law expressing the authority of the people, Meese's understanding of constitutional validity would transform the document into the kind of charter that *Four Letters on Interesting Subjects* calls tyranny. For, in the last instance, he derives authority from the will of the so-called founders—specifically, from the supposed mental contents of those founders—rather than from the people, the only legitimate founders. The Constitution would never have been ratified had it been perceived as the kind of document that Meese thinks it is. His brand of intentionalism could only take hold once a nationalist filiofetism had supplanted the radical republicanism that initially legitimated the constitutional order. The amnesia of that shift in legitimacy paradigms demonstrates the historical specificity of the cultural assumptions that allowed the printed constitution to embody the will of all.

The printedness of the constitution, in short, was understood as precluding *any* official hermeneutics, especially an intentionalist one that would accord privilege to the views of the delegates. As one South Carolinian put it in 1783, "What people in their senses would make the judges, who are fallible men, depositaries of the law; when the easy, reasonable method of printing, at once secures its perpetuity, and divulges it to those who ought in justice to be made acquainted with it."¹⁹

This last passage makes it clear that in allowing the expression of the will of all, the printedness of the Constitution not only underwrites, so to speak, the popular authorship of the Constitution—it summons the readership of the print audience to recertify it continually and universally. As with the authorship, the readership of the Constitution is more than a convenience or mere exigency; in an important sense it is structurally required by representational legitimacy. The same textuality essential to the constitution of law's authority inhabits equally the position of the subject under the law, in that it provides a necessary ambiguation of consent. Popular sovereignty, which avoids domination by allowing that all subjects of the legal order will take their place as the sources of law, requires a notion of consent, in which the people who give law vow that they will take their place as its subjects. The two parts of sovereignty and consent correspond to the compulsory and voluntary aspects of duty. To give law the character of duty republican political rhetoric insists on the foundation of politics in popular sovereignty and popular consent. Thus the predicament of sovereignty in the revolutionary period was everywhere implicated with a problem of consent. Much of the power of the constitutional innovation lies in its solution to the problem: with the Constitution, consent is to sovereignty as readership is to authorship.

Revolutionary rhetoric required Americans to be very good at using the word consent to mean both authorization and compliance at once. For example, when the *Boston Evening Post* proclaimed in 1765 that "the only moral foundation of government is, the consent of the people," it meant either that the consent of the people allowed an existing government to have a "moral foundation," or that consent allowed the existence of the government in the first place—or it meant both simultaneously.²⁰ On one hand, to say that people consent to the law is tautologous, since consent from this point of view designates what Weber calls "validity"—the belief in a norm by the members of a society. Consent of this variety does not confer any lasting authority on law, but just *is* the authority of law; it is either continually reproduced or law loses legitimacy. On the other hand, in a system of positive law and popular sovereignty, consent is adduced

to justify the enforcement of norms even where they are not believed—that is to say, where they are not taken as duty—or those norms obviously would not be law. But this second variety of consent is narrativized; it is the moment at the origin of law in which the coercive character of law is forsworn in advance. Unlike the voluntary aspect of duty, which by nature cannot be instituted as positive law, authorizing consent is consent to one's own coercion, contradiction in terms though that might be.

For the American republicans it was self-evident that a law could not be law by reason of someone else's consent. In a letter to Madison in 1789, Jefferson took this to mean that "no society can make a perpetual constitution, or even a perpetual law." Madison's response astutely realizes that a doctrine of actual consent would not only prevent one generation from legislating for another—this, it will be recalled, is Paine's justification for revolution—but will prevent the majority from legislating for the minority. "Strict Theory," he observes, "at all times presupposes the assent of every member to the establishment of the rule itself." But, asked John Adams when he sensed the same implications, "Shall we say that every individual of the community, old and young, male and female, as well as rich and poor, must consent, expressly, to every act of legislation?" "I find no relief from these consequences," Madison wrote, "but in the received doctrine that a tacit assent may be given to established Constitutions and laws, and that this assent may be inferred, where no positive dissent appears." Indeed, he went on, "May it not be questioned whether it be possible to exclude wholly the idea of tacit assent, without subverting the foundation of civil Society?" Madison, Adams, and Jefferson were understandably worried about this conclusion, because it retroactively denied the legitimacy of the Revolution and, more to the point, left the present order without transcendent legality. Every extant legal order—no matter how tyrannical, corrupt, or irrational—is justified by tacit assent, which is to say that no legal order is justified at all.²¹

The written constitution mediates this crisis in perpetuity—the only way it could be mediated. In the preamble the reading citizen interpellates himself—even herself—into the juridical order precisely at its foundation. Whereas Meese's sacralizing intentionalism understands the foundations of law to lie in the intentions of the patriarchs, the ongoing consumption of the preamble in print makes the moment of foundation perpetual and socially undifferentiated. Not only does it enact the consent of every citizen—male and female, old and young, black and white, rich and poor—it also reads that consent as the transcendent grounds of subjection. We might say that the printedness of the Constitution here restores to the

dutifulness of law the permanence that consent had narrativized. By the same token, the “we” of the Constitution—and this is essential for its legitimating effect—is speaking *to itself*. The evidently untraced origins and universal audience of the printed text allow the people always to be both authoring and reading, both giving and receiving its commands at once. Unlike Rousseau’s general will, which similarly derives its obligatory character from the simultaneity of its common origin and common object, the printed constitution is a mechanism that translates the transcendent conditions of legality into a system of positive law. In this sovereign interpellation the people are always coming across themselves in the act of consenting to their own coercion.

I say “their” own coercion, but of course this is what the Constitution will not allow me to say. There is no legitimate representational space outside of the constitutive we. When someone calls out to the people, you will answer.²² You inhabit the people, but this is not true of any group to which you belong, the people being the site where all lesser collectivities are evacuated. For this reason the preamble contributes to a nationalist imagination in the same way that Benedict Anderson has argued for novels and print in general.²³ By means of print discourse we have come to imagine a community simultaneous with but not proximate to ourselves: separate persons having the same relation to a corporate body realized only metonymically. The national community of the constitutional we is an aspect of the people’s abstractness and may be contrasted with the intense localism of the popular assemblies which were its main rival for the role of the people.²⁴

Some other spokespersons for the people noticed this hazard to their voices. In the ratifying convention in Massachusetts, for example, one Amos Singletary stood up and protested aloud: “These lawyers, and men of learning, and moneyed men, that talk so finely, and gloss over matters so smoothly, to make us poor illiterate people swallow down the pill, expect to get into Congress themselves; they expect to be the managers of this Constitution, and get all the power and all the money into their own hands, and then they will swallow up all us little folks, like the great *Leviathan*, Mr. President; yes, just as the whale swallowed up *Jonah*. This is what I am afraid of.”²⁵ Singletary senses a danger, but he misrecognizes the threat posed against the illiterate by the new constitution. That threat does not depend, as he believes, upon the rapacity of the men of letters, but is established in the legitimation of the document itself, since the document’s authority means that the kind of oral setting in which Singletary participates will henceforth be secondary. To be accurate, we should

say that the authority of the written constitution creates two hazards to the voice of the people. First, it enables the mediation of legitimacy by a relatively small class of the literate. Second, it establishes the denial of such mediation as the first condition of representative legitimacy—a denial made possible by the existence of the written text ceaselessly representing a silent people.

The new paradigm about which Singletary worries finds its exemplary “spokesman” (though neither speaker nor man) in one “Publius”—author of *The Federalist* and now known to be the collective pen name of Alexander Hamilton, James Madison, and John Jay. The very identity of Publius dramatizes the conditions of authority in representational polity, for Publius—like the People in “We, the People”—is emphatically a pen name, a composite voice made articulable only in his written pseudonymity. Throughout the ratification debate he was lauded or attacked only as “Publius” because he was not known by any other name. The highly literate men who lie behind Publius underscore the analogy between their spokesman and the People in the name they give him: Publius Valerianus, commonly known as Publicola (“people-lover”), was one of the founders and early consuls of republican Rome. In Plutarch’s *Lives* he is lengthily compared to Solon as an exemplary lawgiver. In choosing the relatively uncommon pseudonym of Publius the authors of *The Federalist* punningly identify themselves with the public while also identifying themselves with the founding of polity and the institution of law.²⁶

In keeping with the publicity suggested in the identity of Publius, *The Federalist* was produced in a barrage of print. Publius was not content simply to appear in print. Through various machinations he was able to appear simultaneously in four newspapers in New York and another in Virginia, with occasional appearances elsewhere to boot—a strategy of blanketing the public space of print that was warmly resented by his opponents.²⁷ That strategy no doubt reflects Publius’ sense of the high stakes involved in his persuasive task; it can also be seen as corresponding to the claims of public representation implicit in his identity. Publius speaks in the utmost generality of print, denying in his very existence the mediation of particular persons.

For several decades before the Constitution, print had been acquiring the ability to serve as a means of imagining the public sphere. The simultaneity of the artifacts of political print discourse expressed the identity of this sphere which was no longer local. Eventually, although this abstract public sphere was articulated with republican categories of generality, disinterested virtue, and civic liberty, it would enable a modern national

state that was more appropriate to liberal individualism. We can look forward beyond the scope of this book to suggest a way in which the deployment of textuality in the Constitution, though itself profoundly republican, marks the emergence also of a new mode of textuality.

The commission of sovereignty to its literalization in print required from American political culture a high degree of confidence in the transparency of language and the undifferentiated universality of print. "No man is a true republican," says *Four Letters on Interesting Subjects*, "or worthy of that name, that will not give up his single voice to that of the public" (386). The voicing strategies of the written constitution are registered here as the liberty of the social contract. In the decades after ratification, however, a liberal discourse of rights increasingly regarded the state as an institution for accommodating the conflicting claims of persons, and defined persons by their economic self-interest and their privative relation to the state. The republican ideology of print eroded, and an official hermeneutics emerged—only twenty years after our South Carolinian had argued that printing made the opinions of lawyers and judges unnecessary.

Between the legitimating drama of sovereignty that gave rise to the Constitution and the official hermeneutics that resulted from it, the meaning of the document's writtenness had been transformed. The transformation was not recognized as such, but was regarded as a restatement of republican principles. A good example is John Marshall's decision in *Marbury v. Madison*, where he appeals to the Constitution's writtenness in order to argue that hermeneutics gives the law exactly in the act of receiving the law.

The powers of the legislature are defined and limited; and that those limits may not be forgotten, the constitution is written . . . Certainly, all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void. This theory is essentially attached to a written constitution, and is, consequently, to be considered, by this court, as one of the fundamental principles of our society.²⁸

It may seem paradoxical that Marshall's decision, which establishes the principle of judicial review, does so precisely by denying that the court can make law: "the courts, as well as other departments, are bound by" the written constitution. Official hermeneutics came into being on the condition of its own denial. It required both the drama of popular

sovereignty and the republican faith in the transparency of print that seemed to make a hermeneutics unnecessary. Giving the law in receiving it, official hermeneutics repeats, albeit in a very different mode, the sovereign consent of the Constitution.

The salient point of difference is that official hermeneutics constructs a relation between the subject and the text that is registered as mediation. *Language, far from being transparent, has become in its ambiguity the site of social conflict, even while the resolution of that conflict must be received from an authority immanent in the language.* In a letter written in 1814 Gouverneur Morris expresses disbelief at the new state of constitutional textuality. For him, the existence of "a written constitution containing unequivocal provisions and limitations" should have eliminated all difficulty of meaning. Interpreting the Constitution, he writes, "must be done by comparing the plain import of the words with the general tenor and object of the instrument." He then adds, evidently in support of his position: "That instrument was written by the fingers which write this letter." The curious thing about Morris' remark is that he does *not* appeal to his intentions as founder, but to the act of writing as testament to the clarity of the written text. But because authority was now to be received from its already mediated condition, Morris' somewhat comical confidence in what might be called the indexical value of his fingers had become deeply anachronistic. Legality, under the bureaucratic nationalist state, is to be registered as an alienation within experience.

This relation to an authoritatively mediated hermeneutics is characteristically modern. I suggest that it helped to determine a newly representative relation between literary textuality and the nature of subjectivity in the bureaucratic nation. It was of no small importance that the years in which literary culture was established in this country were also the years of protracted constitutional crisis. In the official discourse of law and the state, as well as in the specialized discourse of an emergent literary culture, or even the theological discourse of the higher criticism, it became possible to locate in language the conflicted and mediated character of truth, nonetheless maintaining the authoritative character of that truth. Insofar as authoritative mediation had come to define the position of the subject in relation to the bureaucratic state, such discourses could mutually articulate the experience of that subject. They were all ways of understanding one's fateful immersion in social conflict as a naturally alienated dependence on interpretation. Constitutional hermeneutics, literary culture, and the higher criticism jointly helped to make language to liberal society what the market was to the liberal economy: authoritative but

disembodied mediation of conflict among interested and conflictual subjects.

Thus, textuality came to be understood as rather more than polysemeity, which had long been recognized within scriptural hermeneutics. Texts began to be regarded as having incommensurable meanings, and it became possible to see that incommensurability as given and even as necessary. For this reason Poe's *Narrative of Arthur Gordon Pym*, published fifty years after the Constitution, is a more appropriate illustration of the textuality of official hermeneutics than is Morris' appeal to his fingers. Although Poe displays an obsession with textuality throughout his career, it is nowhere clearer than in this text. And since Poe brought to full development for the first time in America a discourse of the literary distinguished from other discourses precisely by its embrace of a naturalized textuality, there is good reason to regard the novel as a cultural landmark.

In particular, consider the unfingered text that has mysteriously but authoritatively materialized on the island of Tsalal. Pym and his companion, it will be recalled, find some markings resembling characters on the side of a chasm where the earth has flaked away. The circumstances prove to Pym that they could only have been produced by the work of nature. He also makes a set of drawings that show, from an aerial perspective, the shapes of the several chasms he has found. Not until the "Note" appended to Pym's narrative is it revealed that both the markings *and* the shapes of the chasms themselves are writing. We are not told who the agent of these writings is, and our knowledge of the agent behind the Note is ambiguous, since the Note points out that the pattern of the chasms had "escaped the attention of Mr. Poe." According to the Note, the markings Pym has found in the chasm combine an Arabic word meaning "to be white" with an Egyptian word meaning "the region of the south." And the shapes of the chasms, when read in an inverted map, constitute the Ethiopian word meaning "to be shady."²⁹

It would be too simple to say that the meaning of these writings is left ambiguous. That they have reference, even authoritative reference, is clear. The novel appeared in the midst of a crisis over black and white in the region of the South, and its dominant episodes are about race and revolt. Nothing is clearer than that these messages refer to the political crisis of race in the union. At the same time nothing is less clear than *how* they refer to that crisis. This is not simply to say that Poe's ideas on racial conflict are difficult to infer. It is to say that what he has most carefully ambiguated is the textuality of the writings from which he solicits our inference. Another example can illustrate. An extra line appended to the

Note reads: "I have graven it within the hills, and my vengeance upon the dust within the rock." This line, the last in the book, is curiously unattributed. It is italicized to set it off from the speaker of the Note, but it is assigned to no one in lieu of that speaker. In such circumstances, and with a scriptural tone rare in this most untheological of writers, the last line in relation to the text epitomizes the nature of the texts that Pym and Peters have found on Tsalal. They appear from a general source, admit with difficulty of interpretation, are conflictually fraught, but carry transcendent authority as well.

The political crisis that forms the relevant context for these cryptic texts—race and regional conflict—hinged on the textuality of the Constitution. Webster's debate with Hayne had been seven years earlier, and in another three years Madison's newly released notes from the constitutional convention would be read as the key to national fate. In this context it should not surprise us that, although without an author—or rather *because* without an author—the writings on Tsalal bear the full prophetic weight of law. They are encountered both as fate and as the pure resonance of signification. It is the romantic scandal of hermeneutics, now to inhabit the law.

But this, as I have said, is to look beyond the scope of my book. Another problem lies closer at hand. If, as I have suggested, literary textuality can be seen as an aesthetic developed to fit the legitimacy of post-republican, liberal society, what aesthetic could have developed to fit the preliterary culture of republican society? To ask such a question is to have created a problem for literary criticism, which typically predicates its inquiries into early national literature, like any other, on the assumption of liberal society's textual aesthetics. Early national, republican America stands as an interesting anomaly. The cultural conditions for valuing ambiguated textuality and giving it the resonance of modern experience had not yet developed. But the discourse of the public sphere also required a critical posture toward the personal and theological modes of authority that had previously grounded textual aesthetics and hermeneutics.

struction of reason is such that “behind the masks is the universal capacity to take on masks” (233). The main point of difference between this book and Breitweiser’s lies not in any detail of interpretation, but in the general source of interest. Where Breitweiser regards the self as a subject in its own right, traceable from Mather directly to Franklin, I am trying to direct attention to the social practices and political structures of which self and reason are only related manifestations.

14. *The American Weekly Mercury*, April 25, 1734. Bradford, the printer, is drawing heavily on Trenchard and Gordon, and the ideas discussed here would have been a familiar way of relating republicanism and print for any reader of *Cato’s Letters*.

15. See, for example, “Self-Denial Not the Essence of Virtue” (1735), in which Franklin argues that “Self-denial is neither good nor bad, but as ’tis apply’d”—an argument that exhibits Franklin’s habit of subdividing the self out of existence. The self that not only denies itself but further applies that denial is scarcely recognizable as a self.

16. *Busy-Body* No. 3, from the *American Weekly Mercury*, February 18, 1729, in *Writings*, 97.

17. “Plan of Conduct,” in Franklin, *Papers* 1:99–100.

18. It is because Franklin locates himself in generality that he is so difficult to locate. Hence Carl Becker’s well-known remark in the *Dictionary of American Biography* that Franklin was never fully immersed in anything he did. (See the discussion of Becker’s remark in Breitweiser, *Mather and Franklin*, 233, 258.) The same relation to self helps to account for Franklin’s addiction to pseudonyms and fictional personae—exceptional even in his time. Crane counts forty-two different pseudonyms just in the period covered by his study. No one has counted the fictional personae, such as Alice Addertongue or the King of Prussia, but they abound. That perfection, is associated with print for Franklin takes a less serious form in the 1738 *Poor Richard’s Almanac*, where Bridget Saunders exclaims, “What a peasecods! cannot I have a little Fault or two, but all the Country must see it in print!” (2:191).

19. *A Fragment of the Chronicles of Nathan Ben Saddi (Constantinople [Philadelphia], 5707 [1758])*. I have been unable to determine whom “Jacobs” designates in the Philadelphia scene; the available information on the pamphlet and its key seems to be limited to the notes in the *Evans Bibliography*. One would like to know, if for no other reason than the oddly homoerotic language of the satire against Franklin.

20. *An Answer to the Plot* (Philadelphia, 1764). The poem was a reply to a satire called *The PLOT by way of a BURLSK, To turn F——n out of the Assembly* (Philadelphia, 1764), and in at least some copies was printed on the verso of the latter. Both are election polemics in a year in which the election turned decisively on the interpretation of a printed text. Seeking to turn the German population against Franklin, his opponents uncovered an old publication in which he had referred to Germans as “*Palatine Boors*.” They then publicized the remark among the German population. Franklin’s allies leapt to his defense, in part by writing *The Plot*, which, addressing those who were using the remark to attack Franklin, says: “Your *Wisdoms* have mistook a Letter. / *Boar* may be Hogs but *Boor* is Peasant . . . Go home ye *Dunces* learn to spell.”

21. The latter was a common theme in the election of 1764, when Franklin

led the move to end proprietary government in Pennsylvania by appealing for a royal charter. At least one pamphlet accused him of wanting to be royal governor himself: *To the Freeholders and Electors of . . . Philadelphia* (Philadelphia, 1764). At the same time another pamphlet accused him of leveling, of trying to destroy “Every necessary Subordination”; *What Is Sauce for a Goose Is Also Sauce for a Gander* (Philadelphia, 1764). The theme of Franklin’s lower-class origins appears both in the latter and in William Smith’s *An Answer to Franklin’s Remarks on a Late Protest* (Philadelphia, 1764). For background on the election, its polemics, and the extremes of Franklin’s reputation, see J. Philip Gleason, “A Scurrilous Colonial Election and Franklin’s Reputation,” *William and Mary Quarterly* 18 (1961): 68–84.

22. The Hutchinson correspondence can be found in the *Franklin Papers*, 20:539–80. A good account of the whole affair is Bernard Bailyn’s *The Ordeal of Thomas Hutchinson* (Cambridge, Mass.: Harvard University Press, 1974), esp. chap. 7.

23. Wedderburn’s role is described in Ronald Clark, *Benjamin Franklin* (New York: Random House, 1983).

24. The joke is from Plautus, *Aulularia*: “Tun, trium litterarum homo me vituperas? fur” [“You running me down, you? You five letter man, you! You T-H-I-E-F!”]; Loeb ed., trans. Paul Nixon (London: Heinemann, 1928), 268.

25. Compare another remark of Wedderburn: “This property [correspondence] is as sacred and precious to Gentlemen of integrity, as their family plate or jewels are” (21:51). The examples of plate and jewels are telling because of their contiguity with the body. Wedderburn has to insist on a metonymy between letters and the body, a metonymy contained by the juridical force of property relations. Franklin, while denying the force of the metonymy, exploited it, for it is the *same* metonymic bond of letters to the body that had been parodically foregrounded in the 1728 epitaph, or the 1740 preface to *Poor Richard*.

26. At the same time, a Chancery suit brought against Franklin by Whately over the affair charges with a sneer that in disseminating the letters Franklin was merely “carrying on the Trade of a Printer” (21:432). This theme of the silent manipulator of letters became something of a tradition among Franklin’s enemies. Thomas Hutchinson reports with horror seeing Franklin “staring with his spectacles” during an embarrassing speech in Parliament on behalf of the Ministry. “The relation of this speech,” Hutchinson wails, “is on its way to America” (letter to Israel Williams, Sept. 29, 1774, quoted in Bailyn, *Ordeal*, 322).

27. A. Francis Steuart, ed., *The Last Journals of Horace Walpole* (London: Bodley Head, 1908), 1:333.

28. Edward Bancroft, quoted in William Temple Franklin, ed., *Memoirs of the Life and Writings of Benjamin Franklin* (London, 1818), 1:358n.

29. Franklin to Jan Ingenhousz, March 18, 1774 (21:148), and to Thomas Cushing, February 15, 1774 (21:93).

30. Anon., recorded in Horace Walpole, *Last Journals*, 2:77.

IV. Textuality and Legitimacy in the Printed Constitution

1. Since 1987, when this chapter was first presented as a talk, countless volumes have been published on the Constitution. I make no systematic attempt to review this literature. The best source on American constitutionalism remains

Gordon Wood's *The Creation of the American Republic* (Chapel Hill: University of North Carolina Press, 1969; repr. New York: Norton, 1972). The best treatment of the history of popular sovereignty is Edmund S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York: Norton, 1988). For a comparative history of the state constitutions, see Willi Paul Adams, *The First American Constitutions* (Chapel Hill: University of North Carolina Press, 1980). Among recent publications not cited, the most noteworthy is Terence Ball and J. G. A. Pocock, eds., *Conceptual Change and the Constitution* (Lawrence: University Press of Kansas, 1988).

2. James Otis, *Rights of the British Colonies Asserted and Proved* (Boston, 1764).

3. The tension between revolutionary rhetoric and forms of continuity such as the doctrine of state succession is explored in Peter Onuf's *The Origins of the Federal Republic* (Philadelphia: University of Pennsylvania Press, 1983). Onuf is particularly useful on the problem of the sovereignty of the states as political agents, a subject that I have had to slight in this book.

4. The distinction between customary and bureaucratic law follows Unger, *Law and Modern Society*. One of the main differences between bureaucratic and customary law, in Unger's view (and here he follows Weber), is the separation of state and society. The common-law tradition did not observe that separation, as has been amply shown by Nelson, *Americanization of the Common Law*. The emergence of a paradigm of sovereignty in constitutionalism, along with the consequent replacement of the customary legitimacy of common law, is therefore part of the emergence of the modern state.

5. Quoted in Wood, *Creation*, 289.

6. Thomas Dawes, *Oration Delivered March 5th 1781* (Boston, 1781), 20–21.

7. H. L. A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1961), 75.

8. Quoted in Wood, *Creation*, 379.

9. Philip Foner, ed., *The Complete Writings of Thomas Paine* (New York, 1945), 1:28.

10. The term "interpellation" comes from Louis Althusser's "Ideology and Ideological State Apparatuses" in *Lenin and Philosophy* (New York: Monthly Review Press, 1971), 127–186. It designates the hailing of the individual that always renders the individual as a subject within an ideology. See also note 22 below.

11. Jean-Jacques Rousseau, *The First and Second Discourses and Essay on the Origin of Languages*, trans. Victor Gourevitch (New York: Harper & Row), 294–295.

12. Jacques Derrida, *Of Grammatology*, trans. Gayatri Spivak (Baltimore: Johns Hopkins University Press, 1976), 296.

13. Quoted in Wood, *Creation*, 369.

14. Jacques Derrida, *Otobiographies* (Paris: Galilee, 1984), 17 (my translation).

15. Nelson, *Americanization of the Common Law*, 91.

16. Anon., *Four Letters on Interesting Subjects* (Philadelphia, 1776), repr. in Charles S. Hyneman and Donald S. Lutz, eds., *American Political Writing during the Founding Era* (Indianapolis: Liberty Press, 1983), 1:381–382.

17. *Rights of Man* in Foner, *Complete Writings of Thomas Paine*, 1:378.

18. For an excellent discussion of the interest-disinterest opposition in the constitutional period, see Gordon Wood, "Interests and Disinterestedness in the Making of the Constitution," in Richard Beeman et al., eds., *Beyond Confederation: Origins of the Constitution and American National Identity* (Chapel Hill: University of North Carolina Press, 1987), 69–109.

19. Quoted in Wood, *Creation*, 302–303.

20. Quoted in *ibid.*, 182.

21. Jefferson to Madison, September 6, 1789; in *The Papers of Thomas Jefferson*, Julian Boyd et al., eds. (Princeton: Princeton University Press, 1950–), 15:392–397; Madison to Jefferson, February 4, 1790; in *The Papers of James Madison*, William Hutchinson et al., eds. (Chicago: University of Chicago Press, 1962–77 [vols. 1–10]; Charlottesville: University of Virginia Press, 1977–), 13:18–21; John Adams, quoted in Wood, *Creation*, 182.

22. My wording is meant to echo Althusser's explanation of interpellation (see note 10). Ideology, he writes, "transforms the individuals into subjects (it transforms them all) by that very precise operation which I have called interpellation or hailing, and which can be imagined along the lines of the most commonplace everyday police (or other) hailing: 'Hey, you there!' Assuming that the theoretical scene I have imagined takes place in the street, the hailed individual will turn round. By this mere one-hundred-and-eighty-degree physical conversion, he becomes a *subject*. Why? Because he has recognized that the hail was 'really' addressed to him, and that 'it was *really him* who was hailed' (and not someone else)" ["Ideology," 174].

23. Benedict Anderson, *Imagined Communities* (London: Verso, 1983).

24. The ratification parades that were held in some cities—notably in Boston—provide an interesting case in which these two modes for the realization of the public are sutured together. In the parades, printing presses were dragged through the streets on wagons, being operated en route by pressmen who distributed the products to the crowd. The civic populace and the abstract public of print are here called to bear witness to each other in a way that may be without parallel.

25. Jonathan Elliot, ed., *The Debates of the Several State Conventions on the Adoption of the Federal Constitution*, 2d ed. (Philadelphia, 1861), 2:101–102.

26. On the rhetorical strategies of *The Federalist*, see Albert Furtwangler, *The Authority of Publius* (Ithaca: Cornell University Press, 1984); and Garry Wills, *Explaining America* (Baltimore: Penguin, 1981).

27. In the *New-York Journal*, for example, Publius' strategy was described as "a new mode of abridging the liberty of the press" (January 1, 1788).

28. *Marbury v. Madison*, in John Marshall, *Major Opinions and Other Writings*, ed. John P. Roche (New York: Bobbs-Merrill, 1967), 87–88.

29. *The Narrative of Arthur Gordon Pym*, in *Poetry and Tales* (New York: Library of America, 1984). All citations will be to this edition.

V. Nationalism and the Problem of Republican Literature.

1. *Maryland Journal*, May 5, 1788.

2. The classic study of this theme is Benjamin T. Spencer, *The Quest for Nationality* (Syracuse: Syracuse University Press, 1957). See also H. H. Clark,